

Aloke Chakravarty (CO State Bar #52798)
(admitted *Pro Hac Vice*)
SAUL EWING LLP
131 Dartmouth Street, Suite 501
Boston, MA 02116
Telephone: 617-912-0949
Facsimile: 617-723-4151
E-mail: aloke.chakravarty@saul.com
Attorney for Defendant
DAVID OZER

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA
Plaintiff,
v.
DAVID OZER,
Defendant.

Case No. CR 24-00463 SB and
CR 24-00739 SB

**DEFENDANT'S SENTENCING
MEMORANDUM**

DEFENDANT'S SENTENCING MEMORANDUM

I. INTRODUCTION

Defendant David Ozer accepts responsibility and expresses remorse for his crimes.¹ He hopes that incarceration will not be imposed, but if it is, he requests that a sentence of a year and a day be imposed as a split sentence with a portion served in community confinement, with a period of one year of supervised release. Given his need to make restitution, he requests no fine, \$200 of special assessments, and a total of \$421,496 in victim restitution, with \$26,148 having been deemed satisfied. Mr. Ozer disputes the PSR's calculation of his net worth and ability to pay restitution, and

¹ See EXHIBIT 1 (Statement of David Ozer).

1 the portions of the PSR's sentencing guideline calculation as articulated in his
2 objections and in this memorandum, not by contesting facts, but rather whether those
3 facts warrant application of the Sophisticated Means enhancement, and that although
4 unapplied, the Zero-Point Offender departure should apply.
5

6 II. FACTS AND CIRCUMSTANCES

7 Mr. Ozer's fall is the stuff of a tragic Hollywood drama. A self-made family
8 man legitimately hustled to build a decades-long career in entertainment, only to be
9 undone by a virtual siren-song leading to a series of destructive choices in an effort to
10 cling to the status he had earned. It is an ancient tale of fall – but unlike many which
11 play out in federal court, this was a limited episode caused by overwhelming stresses
12 in his life where for a short time, he thought he could work out of it unscathed if a few
13 things just broke his way. They did not.
14

15 David Ozer grew up in modest circumstances, earned a college degree, got
16 married almost 30 years ago, and raised three remarkable children to adulthood. He
17 worked his way up the entertainment ladder, developing his sales skills and
18 developing content starting at a radio station and working in TV, movies and comic
19 books. He earned a good living and worked at some of the industry's greatest brands,
20 including Sony Pictures TV and 20th Century Fox TV. He helped market numerous
21 productions, for original release, such as *Willy's Wonderland*, *Inside the Black Box*,
22 and the DiC Kids Network, and syndications of *Seinfeld* and *Mad About You*. At his
23 peak, he had worked at Landmark Studio Group, which developed numerous titles,
24
25
26
27
28

1 and joint ventured with a larger company, known as Chicken Soup for the Soul
2 Entertainment (CSSE). Ozer received restricted shares for his joint venture, but the
3 position was a mixed bag. He exited the company, and although he was supposed to
4 receive \$1.45mm on paper, he never received that payment and CSSE has now gone
5 bankrupt, and his severance is now worthless.² Ozer took Landmark to Strong Global
6 Entertainment, a public company and began to work for its new subsidiary called
7 Strong Studios (“Strong”). Ozer, partnered with other companies to get productions
8 over the line; its partners had the financing, and Strong had the chutzpah and pluck to
9 bring the deals together and to create the production and distribute them.

13 In 2022, Strong partnered with Ravenwood entertainment to produce and
14 launch an sci-fi thriller series Ozer had been working on for years, ironically called
15 SafeHaven. After production, Ozer and others tried to sell the series, but there were
16 no takers. Ozer was committed to the project, and Strong Studios paid an additional
17 \$700,000 to cover budget overruns during the production. The account originally
18 established for the production had run dry, yet some expenses remained. Excess tax
19 credits, received from budget overruns, were deposited into the account. As partners,
20 Strong and Ravenwood were scheduled to proportionally share in the proceeds of any
21 revenues. Similarly, although both had the opportunity to co-sign on the account, only

26 ² As made clear in his objections, the PSR dramatically overstates Mr. Ozer’s net
27 worth based on his candid reporting of the “face value” of accounts receivable and
28 intellectual property which he is not likely to ever receive. *See, e.g.*, share price ticker
symbol CSSEQ (\$0 as of April 22, 2025).

1 Ozer exercised control over the Safehaven bank account.

2 Around May 2022, Mr. Ozer went on a business trip to drum up potential
3 investors, putting on his Hollywood persona. Mr. Ozer's hamartia got the better of
4 him when -- he visited a social media hookup app and connected with someone he
5 thought was a lady looking for a successful man. Despite never meeting, Ozer shared
6 a few messages and an innocuous photo. Unfortunately for Mr. Ozer, his
7 inconspicuous correspondences ultimately led to his extortion.
8

9 Mr. Ozer began receiving threatening and extortionist text messages from his
10 connection. Armed with his image and some personal details, the individual
11 threatened to tell Mr. Ozer's wife and family that Ozer was "sick he likes paying
12 underage escorts for sex" and attached text messages allegedly between Ozer and a
13 female user. The extortionist sent hundreds of messages to Ozer, several of them
14 threats to tell Mr. Ozer's family members, colleagues, and even his children's friends,
15 providing contact information or sample messages to prove the veracity of his claims.
16

17 *See* EXHIBIT 2 (Representative Sample of Extortionist Communications).³ The
18 extortionist also researched Mr. Ozer's business dealings, learned about his
19 production partnerships, and even threatened to contact actors and other personnel
20 slated to be in his productions. It was a particularly precarious time for Mr. Ozer, as
21 his company Strong Studios was doing well with legitimate production deals and well
22
23
24
25
26
27

28 ³ *See* PSR at 11 n.4.

1 on its way toward a potential windfall-offering spinoff with Strong Global
2 Entertainment. Mr. Ozer's personal and professional reputation hung in the balance
3 of the extortionist's whim.

4
5 Mr. Ozer believed that the only way to avoid the embarrassment was to accede
6 to the extortionist's payment demands, keeping them quiet and buying him more time
7 pay his ransoms. To protect his reputation, his family's faith in him, and his business,
8 David paid the extortionist not to engage in his personal and professional life.
9 Between May 2022 and February 6, 2023, he sent over \$275,000 from his personal
10 and business accounts per the extortionist's instructions.⁴ In all that time, Mr. Ozer
11 had not committed a crime, but he had blown through whatever funds he could
12 without raising questions with his wife or business partners.

13
14 By February 2023, Ozer was stuck. His weakening marriage was in no state to
15 absorb these revelations were he to come clean to his family, particularly after the
16 passage of time. He was barely keeping the extortionist at bay and was receiving daily
17 threats with increasing urgency. Finally, on February 6, 2023, Mr. Ozer contacted the
18 FBI through their Internet Crimes Complaint Center.⁵ But they did nothing.⁶

19
20 Feeling on his own against the extortionist, Mr. Ozer then turned to the
21

22
23
24
25 ⁴ Of the monies wrongly obtained by Defendant, approximately \$379,000 was
26 transferred to the extortionist—the *sine qua non* of these regrettable offenses. *See*
27 EXHIBIT 3 (Spreadsheet of Payments to Extortionist)

28 ⁵ *See* EXHIBIT 4 (David Ozer Report of Extortion February 6, 2023)

⁶ More recently, the U.S. Secret Service and local authorities have taken up the investigation of the extortionist and have interviewed Mr. Ozer.

1 accounts he had left under his control: the Safehaven account. He reasoned that he
2 would be ultimately entitled to a share of the monies in those accounts at the end of
3 the production, and at the end of February 2023, he began to dip into the Safehaven
4 account. Desperate for capital, in March 2023, he began to solicit others to engage in
5 potential production partnerships with him, for the development of scripts. These were
6 legitimate projects, but he was desperate to get the cash as soon as possible to cover
7 the amounts taken out of the Safehaven account. He started using the payments for
8 future projects to pay for other existing obligations. In all, Mr. Ozer obtained
9 approximately \$202,500 in additional funds for projects that never got off the ground,
10 and for which he didn't have the money to pay back.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Ravenwood eventually began asking questions about the absence of funds in
the Safehaven account, and after an attempt to jerk them around, the jig was up.
Although Mr. Ozer had started to reimburse the Safehaven account and Strong Global
had paid the embezzled funds back, Ravenwood filed a civil lawsuit against Mr. Ozer
and pushed for this case.

The publicity around the civil lawsuit and subsequent criminal case
immediately ended Mr. Ozer's viability in Hollywood. Ozer decided to accept
responsibility for his actions and agreed to a plea agreement and to cooperate with the
government, proffering and providing them with information about other crimes with
evidentiary documentation. However, Ozer's fortunes did not change. After the
meeting, the government brought additional charges based on the additional victims

1 who emerged that didn't get paid back for their investments.

2 Mr. Ozer not only lost his money, his profession, his dignity and his reputation,
3 but his wife has left him, he's lost standing in his community, and he has suffered a
4 recent mental breakdown for which he had to be hospitalized.⁷ He has suffered
5 tremendously, and he is prepared to face justice for his crimes. In this context,
6 understanding why these crimes are unlike those that revolve around greed or evil or
7 more common motivation, should help the Court fashion a punishment that does not
8 exacerbate the harm of this situation. A lengthy sentence today is not what this drama
9 deserves, and while Mr. Ozer is ruined, he can emerge to rebuild and repay. He has
10 shown his adaptability and resourcefulness, and there is no risk of his engaging in this
11 kind of conduct again – he will neither have the opportunity as his Hollywood career
12 is over, nor will he have the need, as the light has shone on the extortion.⁸ The end of
13 this story should be one of mercy, to be constructive to the victims by being able to
14 earn restitution, and to redeem his life from the isolation of its lowest point.
15

16 **III. THE SENTENCING GUIDELINES**

17 The Guidelines are “the starting point and initial benchmark” for determining
18 an appropriate sentence.⁹ Here, the PSR calculates that Mr. Ozer's guideline range is
19 41–51 months' imprisonment. This is based on a total offense level of 22 and criminal
20

21 ⁷ See EXHIBIT 5 (Discharge Note from Mental Health facility)

22 ⁸ Even the extortionist has communicated their regret about destroying Mr. Ozer.
23 See EXHIBIT 7 (Extortionist's confession)

24 ⁹ *Gall v. United States*, 552 U.S. 38, 49 (2007).

1 history category I. The PSR initially recommended a sentence of 18 months, which it
 2 increased to a still non-guidelines sentence of 30 months upon the subsequent
 3 information being filed, based on the § 3553(a) sentencing factors and without valuing
 4 the departure for coercion and duress under §5K2.12. A twelve month increase in
 5 sentence is simply too high for such little change in circumstances, which was one of
 6 the reasons for the bargain of the plea agreement. Although the Sentencing Zone
 7 options are like the rest of the Sentencing Guidelines, discretionary, the Guidelines
 8 specifically authorize a split sentence for defendants in Zone C.¹⁰ Notably, a 12-18
 9 month sentence recommendation as Probation originally recommended, would be the
 10 equivalent as if Mr. Ozer were in Zone C.

11
 12 After determining a defendant's guideline range, sentencing courts consider
 13 whether a departure is warranted.¹¹ In addition to determining the appropriateness of
 14 any departures, sentencing courts must also consider the § 3553(a) sentencing factors
 15 and whether they warrant a variance outside the advisory or adjusted guideline range.
 16 We address each in turn.

17 **A. Not Sophisticated Means – USSG § 2B1.1(b)(10)(C)**

18 The Guidelines provide for a two point increase as a specific offense
 19 characteristic if the defendant personally employed sophisticated means to perpetrate
 20

21
 22
 23
 24
 25
 26
 27
 28 ¹⁰ See USSG § 5C1.1(d).

¹¹ See *United States v. Ellis*, 641 F.3d 411, 416 (9th Cir. 2011) (describing process).

1 or conceal his fraud.¹² This provision has been clarified to mean that it is only the
 2 exceptionally complex that warrants enhancement.¹³ The term “sophisticated means”
 3 is defined as “especially complex or especially intricate offense conduct pertaining to
 4 the execution or concealment of an offense.”¹⁴

6 Mr. Ozer did not use especially complex or sophisticated means to perpetrate
 7 the fraud in this case. After taking money out of an account, he lied about whether he
 8 had misdirected the money and reactively forged documents to try to persuade the
 9 victims. He did this to buy time in order to obtain the money through his other
 10 ventures, including the failed productions for which he was raising money. These
 11 were not especially complex means or premeditated such that this enhancement
 12 should apply.¹⁵ The typical application of this enhancement is for much more
 13 sophisticated means that would act to prevent detection of the criminal conduct. That
 14 is not what happened here.

18 **B. Zero Point Offender - USSG § 4C1.1**

20 ¹² See *United States v. Jenkins-Watt*, 574 F.3d 950, 965 (8th Cir. 2009) (affirming
 21 application of the sophisticated means enhancement).

22 ¹³ See *United States v. Patterson*, No. 22-10113, 2023 WL 3073103, at *1 (9th Cir.
 23 Apr. 25, 2023) (compiling cases upholding sophisticated means enhancement more
 24 egregious than an offender who directly dealt with victims).

24 ¹⁴ U.S.S.G. § 2B1.1(b)(10)(C) cmt. n.9(B).

25 ¹⁵ The Sentencing Guidelines Commission note that only 11.9% of all 2B1.1
 26 defendants are also given the Sophisticated Means enhancement. See United States
 27 Sentencing Commission, Use of Guidelines and Specific Offense Calculations
 28 Based: Fiscal Year 2023, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/guideline-application-frequencies/2023/Ch2_Guideline_FY23.pdf.

1 The Guidelines explicitly authorize a sentencing court to depart downward for
2 a first time offender in Mr. Ozer’s position at the time he pleaded guilty to the instant
3 offenses. Probation has elected NOT to grant Mr. Ozer this departure under its
4 guidelines calculation because one of the victims claims to have suffered financial
5 hardship from the instant crime. Mr. Ozer accepts the responsibility for committing
6 the crimes of conviction, but he is *not responsible* for the *choices of others* and how
7 they may have managed their finances. Mr. Ozer did not object to the specific conduct
8 enhancement that applies because one of the victims has asserted financial hardship,
9 because he understands that the victim may in fact have suffered such hardship, and
10 the burden of production for the enhancement to apply is modest. However, Probation
11 impermissibly relied on the application of that enhancement to also find that Mr. Ozer
12 is not also eligible for the departure under §4C1.1. This “double-counting” of the
13 financial hardship is not only an inaccurate application of the guidelines, it unfairly
14 punishes Mr. Ozer for the unreasonable choice of one victim to *choose* not to pay
15 back an existing financial obligation in favor of a risky profit-generating investment.
16 It was the default on the existing financial obligation that directly led to the victim’s
17 financial hardship, not Mr. Ozer’s failed production opportunity.
18
19
20
21
22
23

24 USSG §4C1.1 excludes only those who “*personally* caused substantial
25 financial hardship”, in contrast to the §2B1.1 enhancement. This distinction is further
26 clarified in the Commentary, which states that this exclusion must be found separately
27
28

1 from the §2B1.1 enhancement.¹⁶ Given that the individual’s substantial financial
2 hardship resulted from a default on her pre-existing financial obligations, specifically
3 high-interest loans taken out by her realty entity, Mr. Ozer cannot be seen to have
4 “personally caused” this hardship for purposes of §4C1.1. A defendant’s punishment
5 ought not to be increased because of financial arrangements a victim made *a priori*.
6

7
8 Notably, even if the Court believes that Mr. Ozer does not technically qualify
9 for a departure under §4C1.1, it is permitted to grant a similar reduction through a
10 variance, and such accommodation would be appropriate here.¹⁷
11

12 C. Coercion and Duress – USSG § 5K2.12

13 A central feature of this case, and agreed to in the plea agreements, is the
14 application of the § 5K2.12 departure for Coercion and Distress. The predicate
15 conditions apply here, as Defendant was subjected to blackmail and extortion, a form
16 of coercion and duress, that drove him to commit the offense to pay the extortionist.
17 The evidence of this extortion is found in the extensive messages and posts detailing
18 the threats to Mr. Ozer, his wife, his son, his business partners, co-workers and others,
19 and includes evidence of Ozer’s efforts to avoid the situation, such as reporting the
20
21
22
23

24 ¹⁶ See USSG § 4C1.1 cmt. n.1 (“The application of subsection (a)(6) is to be
25 determined independently of the application of subsection (b)(2) of §2B1.1 (Theft,
26 Property Destruction, and Fraud).”).

27 ¹⁷ Whether framed as a downward departure or a variance under the court’s § 3553(a)
28 analysis, appellate courts review such determinations, if challenged, as part of the
sentence’s substantive reasonableness. *United States v. Sicairos-Tamayo*, No. 21-
30086, 2022 WL 522284, at *1 (9th Cir. Feb. 22, 2022).

1 blackmail to authorities. For §5K2.12 to apply, the evidence merely needs to
 2 demonstrate that it played a substantial role in Mr. Ozer's crimes. In fact, as evident
 3 even in the early days of the extortion, Mr. Ozer did not commit these crimes until he
 4 felt like he was backed into a corner with the untimely risk of serious and catastrophic
 5 personal, reputational and financial harm. While some would not have fallen for this
 6 scam, given where Mr. Ozer was at the time, he was particularly vulnerable to it.
 7 Notably, he was not alone, as others made similar reports about the same extortionist,
 8 one even being forced to send Mr. Ozer money as a pass-through by the extortionist.¹⁸

12 A departure under this guideline is in the sound discretion of the court.¹⁹
 13 Valuing the extent of an appropriate departure under §5K2.12 is more art than
 14 science.²⁰ We would not be here without the extortion at issue, and this central aspect
 15 of the case ought to be weighed heavily in deciding an appropriate departure.
 16 Considering that the extortionist was responsible for almost all of the loss-amount in
 17 this case (\$379,000 versus \$421,496 total loss), the context suggests a substantial
 18 departure is appropriate. One principled departure method is to look at the difference
 19 between these values to suggest an approximation for the harm as calculated under
 20 §2B1.1. Consequently, approximating how much of the loss was attributable to

24 _____
 25 ¹⁸ See EXHIBIT 8 (MG Report of Similar Extortion by Extortionist)

26 ¹⁹ See *United States v. Lopez-Garcia*, 316 F.3d 967, 973 (9th Cir. 2003) (affirming
 lower court's declination to depart from guidelines under § 5K2.12).

27 ²⁰ See, e.g., *U.S. v. Sandoval-Bustamante*, 451 F. App'x 660, at **1 (9th Cir. 2011)
 28 (affirming reasonableness of two-level downward departure under § 5K2.12); *U.S. v. Lipsey*, 62 F.3d 1134, 1137 (9th Cir. 1995) (same).

imperfect coercion and duress is a principled concept to mitigate the arbitrariness of the §2B1.1 guidelines. Here, the \$41,000 difference between the extortionate amount and the loss amount would result in a §2B1.1 loss level of 6, which would be an 6 point decrease from the offense level as calculated in the PSR. Such a departure is reasonable here.

IV. VARIANCE

A. Section 3553(a) Sentencing Factors

The guidepost for courts in determining a reasonable sentence is that the sentence be sufficient *but not greater than necessary* to serve the sentencing purposes set forth under 18 USC § 3553(a)(2),²¹ after considering the § 3553(a) sentencing factors.²² Although the Court must consider the Sentencing Guidelines, they are not entitled to more weight than any other § 3553(a) sentencing factor.²³ The Supreme Court has emphasized that “[t]he Guidelines are not only *not mandatory* on sentencing

²¹ The four sentencing purposes under 18 U.S.C. § 3553(a)(2) are: (A) to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

²² The seven sentencing factors under 18 U.S.C. § 3553(a) are: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to reflect the four sentencing purposes; (3) the kinds of sentences available; (4) the kinds of sentences and the sentencing range established by the Sentencing Commission; (5) any pertinent policy statement issued by the Sentencing Commission; (6) the need to avoid unwarranted sentence disparities; and (7) the need to provide restitution to any victims of the offense.

²³ *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008).

1 courts; they are also not to be *presumed* reasonable.”²⁴ “[E]xtraordinary
2 circumstances are not needed to justify a sentence outside the guidelines range.”²⁵

3
4 Notably, the Ninth Circuit has recognized that § 3553(a) sentencing purposes
5 may be met through a non-custodial sentence even where not recommended by the
6 Guidelines. In *United States v. Edwards*, the Ninth Circuit reasoned that § 3553(a)
7 does not require that sentencing goals be met through a period of incarceration.²⁶ It
8 also expressed that it may “*very often be that release on probation under conditions*
9 *designed to fit the particular situation will adequately satisfy any appropriate*
10 *deterrent or punitive purpose.*”²⁷ This is where we find ourselves.

13 **B. The Nature and Circumstances of the Offense**

14 Mr. Ozer ultimately participated in a series of fraudulent actions, but they were
15 largely opportunistic and motivated not by greed, but the desire to spare himself and
16 his family from the shame, business consequences, and the pain of public disclosure
17 of his virtual dalliance. Further, one victim, Ravenwood, has been made whole
18 through Strong Global, and Mr. Ozer may make the individual victims reasonably
19 whole again with gainful employment, to which his event marketing efforts during
20 the pendency of this case demonstrate his capacity. Unlike many cases this court sees,
21 the restitution amount here is not absurd and is potentially achievable with someone
22
23
24

25
26 ²⁴ *Nelson v. United States*, 555 U.S. 350, 352 (2009).

27 ²⁵ *United States v. Ruff*, 535 F.3d 999, 1002 (9th Cir. 2008).

28 ²⁶ *United States v. Edwards*, 595 F.3d 1004, 1017 (9th Cir. 2010).

²⁷ *Id.* at 1016 (citation omitted), 1016 n.9 (emphasis added).

1 with Mr. Ozer’s skills, should he be permitted to live in the community and be able
2 to work in skilled positions that he has his whole life.

3
4 **C. Deterrence, Protection of the Public, and Mr. Ozer’s**
5 **Personal History and Characteristics.**

6 Concerning specific deterrence and the need to protect the public, the likelihood
7 that Mr. Ozer will reoffend in this manner is non-existent. While true that subsequent
8 charges were brought against Mr. Ozer, those offenses occurred simultaneously to the
9 initial matter and were born of the same motivation and circumstances. The Ninth
10 Circuit has recognized that general deterrence is often served by probation in the
11 appropriate case.²⁸ Research suggesting that the certainty of getting caught that deters
12 crime—not the severity of the punishment, supports the Ninth Circuit’s conclusion.²⁹
13

14 Relatedly, this Court must also consider Mr. Ozer’s personal history and
15 characteristics, including the steps he has taken to seek mental health counseling and
16 to begin rebuilding his life with reinventing his occupation in a way that he can
17 sustainably earn to support his family and repay his victims. These factors are
18
19
20
21

22 ²⁸ See *Edwards* 595 F.3d at 1016–17 n.9 (rejecting argument that goal of general
23 deterrence under §3553(a) must be met through incarceration).

24 ²⁹ See, e.g., Oliver Roeder, Lauren-Brooke Eisen, and Julia Bowling, *What Caused*
25 *the Crime Decline?*, Brennan Ctr. for Just., Feb. 12, 2015, at 26 (“The National
26 Academy of Sciences (NAS) concluded that ‘insufficient evidence exists to justify
27 predating policy choices on the general assumption that harsher punishments yield
28 measurable deterrent effects.’”); Community Corrections Collaborative Network,
Myths and Facts: Why Incarceration is Not the Best Way to Keep Communities Safe,
Nat. Inst. of Corr. 2016, at 2 (“Research suggests that incarceration does *little* to
change a person’s behavior.”) (emphasis added).

1 significant here and warrant a variance.

2 Mr. Ozer has cared for others and put their needs before his own throughout his
3 life. The stress of this case has simply been too much to bear for his marriage. Mr.
4 Ozer's and his wife's families came to rely upon Mr. Ozer as a trusted leader, and he
5 helped his in-laws and his family as a matter of course. For more than four years until
6 his recent death, Mr. Ozer and his wife cared for his father-in-law. In addition to being
7 a husband, father, brother, and caretaker, Mr. Ozer has devoted countless hours to his
8 community. Mr. Ozer's community service is not a newfound passion; it is a
9 commitment he has kept throughout his life despite working full time.³⁰

13 **D. Providing Just Punishment and Promoting Respect for the** 14 **Law**

15 A non-custodial sentence can and often does satisfy the need for retribution and
16 punishment.³¹ As the *Edwards* court acknowledged, "carefully crafted specific
17 probationary terms" designed to address the particulars of the offense, including strict
18 financial conditions, can "carry specific punitive weight."³² The Guidelines include
19 countless possible mandatory, standard, and special conditions that courts may choose
20 from, in addition to fashioning their own. They also recognize that home detention
21 may be imposed as a condition of probation if imposed as a substitute for
22

25
26 ³⁰ The Court is encouraged to read the cross section of supportive letters in EXHIBIT
27 9 (Letters of Support).

28 ³¹ See *Edwards* 595 F.3d at 1016–17 n.9.

³² *Id.* at 1016 n.9; see also *id.* at 1011 n.2

1 imprisonment.³³ Simply put, probation *is* punishment.

2 In addition to whatever confinement or conditions this Court imposes, Mr. Ozer
3 will be obligated with a restitution judgment for much of his life and at least for the
4 near future, will be unable to accumulate much beyond his needs. Further, beyond
5 any punishment this Court may impose, Mr. Ozer has and will continue to suffer the
6 personal and professional consequences of these convictions. Mr. Ozer has
7 tremendous guilt about the hardship this case has caused his family and his very public
8 shaming has reinforced the power and accountability of the law.

9 **E. The Need to Provide Restitution**

10 The need to provide restitution to any victims of the offense is another
11 sentencing factor for this Court to consider. The Ninth Circuit has recognized that this
12 goal is “better served by a non-incarcerated and employed defendant.”³⁴ Though
13 longer prison terms cannot be substitutes for monetary penalties or used to punish a
14 defendant’s inability to pay restitution,³⁵ “[a] sentencing court is empowered to
15 consider whether the victims will receive restitution from the defendant in varying
16 from the Sentencing Guidelines based on § 3553(a) factors.”³⁶ Such a variance is
17

18
19
20
21
22
23
24 ³³ See USSG § 5B1.3(e)(2).

25 ³⁴ *United States v. Rangel*, 697 F.3d 795, 804 (9th Cir. 2012); see also *United States*
26 *v. Burgum*, 633 F.3d 810, 814–15 (9th Cir. 2011) (reaffirming that a district court may
27 consider a defendant’s ability to pay restitution in deciding to impose a more lenient
28 sentence but may not treat a defendant’s inability to pay as an aggravating factor).

³⁵ *Burgum*, 633 F.3d at 814–15.

³⁶ *Rangel*, 697 F.3d at 803.

1 even more appropriate here, where, at 59 years old, Mr. Ozer has limited working
2 years remaining in which to make restitution. Unlike in many fraud cases, Mr. Ozer
3 will have the ability to make restitution, especially if he is not in custody and able to
4 work in skilled positions that he has been able to work throughout this case.

6 As evident in the attached reimbursement accounting, Safehaven 2022 was
7 reimbursed for the amount that Defendant had taken out of the account by Strong
8 Global, who submitted an insurance claim and apparently received payment for that.
9 Defendant also had paid back \$4,000 into the account prior to being charged in these
10 cases. In addition, Defendant made payments of \$4,141.48 to Ri. R, and payments of
11 \$18,100 to C.C. *See* EXHIBIT 6 (Documentation of Payments of Certain Restitution
12 Obligations). A revised restitution outstanding amount should be \$395,254.52, and
13 the amount outstanding to each victim should be modified accordingly. The entity
14 entitled to reimbursement for the Safehaven embezzlement is not Ravenwood, who
15 has been made whole, but rather Strong Global's insurance carrier.

20 F. Avoiding Unwarranted Sentencing Disparities

21 Courts appear to widely recognize that sentencing purposes may be met
22 through a non-custodial or below-guideline sentence. In fiscal year 2024, only 41.4%
23 of defendants sentenced under § 2B1.1 received a sentence within the guideline
24 range.³⁷ For the past decade, the *average* sentence under § 2B1.1 regardless of
25

27 _____
28 ³⁷ *See* U.S. Sentencing Commission, *Table E-7: Sentence Imposed Relative to the Guideline Range for Economic Offense Cases (Fiscal Year 2024)*,

1 criminal history category has consistently remained between 20–24 months.³⁸ A
 2 sentence in the range of 12–18 months thus would not result in an unwarranted
 3 sentencing disparity between Mr. Ozer and other defendants sentenced under §2B1.1,
 4 as such sentence is near average. However, this average obviously includes many
 5 fraud cases that do not involve the mitigating circumstances present here.
 6

7 **G. Policy Variances**

8
 9 Courts and scholars have long commented that § 2B1.1 lacks empirical support
 10 and have taken particular issue with its overemphasis on loss amount. Federal judges
 11 have referred to the fraud guidelines as “a black stain on common sense;”³⁹ “patently
 12 unreasonable” and “so run amok that they are patently absurd on their face;”⁴⁰ “of no
 13 help;”⁴¹ and “fundamentally flawed.”⁴² “[A]s with a wide range of critics, federal
 14 judges lack sufficient confidence in the policies underlying the [fraud] guideline and
 15 the ranges it produces,” resulting in frequent below-guideline sentences.⁴³
 16
 17

18
 19 [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/TableE7.pdf)
 20 [reports-and-sourcebooks/2024/TableE7.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/TableE7.pdf) (last accessed April 21, 2025).

21 ³⁸ See U.S. Sentencing Commission, Figure E-4: Sentence Length in Economic
 22 Offense Cases Over Time, [https://www.ussc.gov/sites/default/files/pdf/research-and-](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/FigureE4.pdf)
 23 [publications/annual-reports-and-sourcebooks/2024/FigureE4.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2024/FigureE4.pdf) (last accessed April
 24 21, 2025).

25 ³⁹ *United States v. Parris*, 573 F.Supp.2d 744, 754 (E.D.N.Y. 2008).

26 ⁴⁰ *United States v. Adelson*, 441 F.Supp.2d 506, 506, 515 (S.D.N.Y. 2006).

27 ⁴¹ *United States v. Watt*, 707 F.Supp.2d 149, 151 (D. Mass. 2010).

28 ⁴² *United States v. Corsey*, 723 F.3d 366, 377, 380 (2d Cir. 2013) (Underhill, J.,
 concurring).

⁴³ See Mark W. Bennett et al., *Judging Federal White-Collar Fraud Sentencing: An
 Empirical Study Revealing the Need for Further Reform*, 102 Iowa L. Rev. 939, 989
 (Mar. 2017)

1 Because the starting point under §2B1.1 is so high, Mr. Ozer is left facing a
2 significant period of imprisonment despite the Probation Office's recognition that a
3 substantial variance is warranted under § 3553(a), and before any application of the
4 coercion and duress departure under § 5K2.12. This Court should consider whether
5 the guidelines calculation in this case is appropriate and proportionate to the harm and
6 the mitigating factors here.
7

8
9 **V. Conclusion**

10 For the reasons stated above, Defendant respectfully requests that the Court
11 issue a merciful sentence, varying from the Guidelines calculation and that is no
12 greater than that necessary to serve the interests of justice.
13

14
15 Respectfully submitted,
16

17
18 Dated: April 22, 2025

SAUL EWING LLP

19
20 By: s/ Alope Chakravarty
21 Alope Chakravarty
22 Attorney for Defendant
23 David Ozer
24
25
26
27
28

SAUL EWING LLP
1888 CENTURY PARK EAST, SUITE 1500
LOS ANGELES, CALIFORNIA 90067
(310) 255-6100

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2025, I electronically filed the document described as DEFENDANT’S SENTENCING MEMORANDUM with the Clerk of the Court using the CM/ECF System, resulting in an automatic transmission of a Notice of Electronic Filing to all counsel of record in the above-referenced proceeding.

s/ Alope Chakravarty

Alope Chakravarty